

KOAY TENG SOON & ANOR

a

v.

PP

COURT OF APPEAL, KUALA LUMPUR

b

LAMIN MOHD YUNUS PCA

HAIDAR MOHD NOOR JCA

MOHD NOOR AHMAD J

[CRIMINAL APPEAL NO: J-05-23-97]

26 JANUARY 2000

c

CRIMINAL PROCEDURE: *Sentence - Public interest - Young first offender inflicting serious injuries on victim resulting in death - Whether court must consider public interest along with interest of offender - Whether public interest outweighs mitigating factors*

d

The appellants were convicted of an offence under s. 304 (second limb) of the Penal Code read with s. 34 of the same Code. This was their appeal against sentence. In praying for leniency, the appellants urged the court to take into consideration the fact that they were aged 17 and 18 years old at the time the offence was committed; that they had been in custody since their arrest; and that they had no previous convictions. As against this, the prosecution brought to the court's attention the serious injuries inflicted on the victim that resulted in his death.

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Held:

Per Haidar Mohd Noor JCA

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[1] In considering the sentence to be imposed, the court must take into account the public interest element and not merely the interest of the appellants even though they might be of tender age at the time of the commission of the offence. In the instant case, public interest far outweighed the mitigating factors given the facts and the serious injuries inflicted that resulted in the death of the victim.

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[Appellants sentenced to nine years' imprisonment each; sentence to run from date of arrest.]

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Case(s) referred to:

PP v. Loo Choon Fatt [1976] 2 MLJ 256 (*refd*)

Tan Bok Yeng v. PP [1972] 1 MLJ 214 (*refd*)

i

a Legislation referred to:

Criminal Procedure Code, s. 293

Penal Code, ss. 34, 302, 304

For the appellants - RK Menon; M/s RK Menon & Co

For the respondent - Zauyah Bee Loth Khan DPP

b

[Appeal from High Court, Johor Bahru; Criminal Trial No: 45-7 of 1995]

Reported by S Dharmendran

JUDGMENT

c

Haidar Mohd Noor JCA:

The appellants were originally charged in the High Court, Johor Bahru for causing the death of Liew Chin Lin on 15 February 1995 at about 1.15pm in Kg. Senai Subur, Tasek Utara, District of Johor Bahru, an offence under s. 302 of the Penal Code read with s. 34 of the same Code.

d

Before the commencement of the trial, the prosecution tendered an amended charge under s. 304 (1st limb) of the Penal Code read with s. 34. The appellants pleaded guilty to the amended charge. After the facts were read out and explained to them, both of them admitted the facts as correct. The learned judge after considering the mitigating factors put forward on their behalf by their counsel, sentenced each of them to 12 years imprisonment with effect from their date of arrest, that is, 16 February 1995.

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The appellants, being not satisfied with the sentence imposed, appealed to us in respect of the sentence only.

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In the appeal before us the deputy public prosecutor with the agreement of counsel for the appellants conceded that the facts disclosed an offence under s. 304 (2nd limb) of the Penal Code read with s. 34. We accordingly substituted the conviction to one under s. 304 (2nd limb) of the Penal Code read with s. 34.

g

Counsel for the appellants submitted that as at the date of the hearing of the appeal before us, the first appellant was 22 years old and the second appellant was 21 years old. However, at the time of the commission of the offence, the first appellant was 18 years old and the second appellant was 17 years old. (see p. 30 of the appeal record). Counsel for the appellants urged upon us to consider the ages of the appellants who are considered to be young at the time the offence was committed.

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Quite apart from the age factor, it was submitted that the appellants had been in custody since the date of the arrest, ie, 16 February 1995. Both of them had no previous convictions.

a

In the circumstances counsel for the appellants prayed for leniency on behalf of the appellants.

b

The learned deputy public prosecutor brought to our attention the serious injuries inflicted on the deceased that resulted in his death. The injuries are stated at pp. 46 to 50 of the appeal record. According to the doctor, who conducted the post-mortem on the deceased, the most serious injuries were at the head which resulted in his death.

c

Having considered the mitigating factors put forward by the appellants' counsel and to what the learned deputy public prosecutor submitted, the appropriate sentence in our view, should be a custodial sentence. We then next have to consider the period of imprisonment that should be imposed. The maximum punishment under s. 304 (2nd limb) of the Penal Code is ten years imprisonment, but we must in considering the sentence to be imposed take into account the public interest element and not merely the interests of the appellants even though they might be of young age at the time of the commission of the offence. In any event, they do not come within the meaning of youthful offenders under s. 293 of the Criminal Procedure Code as they were above the age of sixteen years.

*d**e*

Sharma J in *Tan Bok Yeng v. Public Prosecutor* [1972] 1 MLJ 214 in dealing with the sentence in respect of an offence of robbery involving one of the accused whose age was 20 years, stated at p. 215:

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The second accused was 20 years of age while the appellant was 25 years at the date of the commission of the crime. I am quite aware that the law does provide for a lesser sentence or no sentence at all imposed upon persons of young age. There has, however, emerged in recent years in our society certain species of crimes which the alacrity of mind and body, the dare, dash and defiance of youth alone is capable of performing and producing. Law cannot, in my view, remain merely a static and a meaninglessly, if ornamental and an orthodox instrument of justice, ineffective in its results and application. The social needs of the times have to be met and effectively met. It is not merely the correction of the offender which is the prime object of the punishment. The considerations of public interest have also to be borne in mind. In certain types of offences a sentence has got to be deterrent so that others who are like-minded may be restrained from becoming a menace to society.

*g**h**i*

- a* In the appeal before us, the offence is more serious as it involves the death of a student.

- b* The learned judge in imposing the sentence of imprisonment of twelve years on each appellant under the first limb of s. 304 of the Penal Code took into consideration of what the learned deputy public prosecutor referred to “gejala sosial yang melanda remaja pada ketika itu dan sekarang. Salah satu dari gejala tersebut, telah menyebabkan satu kejadian pembunuhan di sekolah Datuk Abdul Rahman Yassin baru-baru ini.” He went on to say “Simati dalam kes di hadapan saya adalah seorang penuntut di Tingkatan V di Sekolah Menengah Tasek Utara, Johor Bahru. Dengan *c* itu meskipun umur kedua-dua tertuduh berkenaan masih muda ketika melakukan kesalahan tersebut, mengikut mahkamah bahawa kepentingan awam (“public interest”) hendaklah dipertahankan.” On the question of public interest we would respectfully agree with what Hashim Yeop A. Sani J (as he then was) said in *PP v. Loo Choon Fatt* [1976] 2 MLJ 256 at *d* p. 258:

- e* ... A convicted person will also normally bring up problems of family hardship and the other usual problems of living. In such a situation the courts might perhaps find it difficult to decide as to what sentence should be imposed as that the convicted person may not be further burdened with additional hardship. This in my view is a wrong approach. The correct approach is to strike a balance, as far as possible, between the interests of the public and the interests of the accused. Lord Goddard L.C.J. in *Rex v. Grondkowski* [1946] All ER 560, 561, offered some good advice when he said:

- f* The judge must consider the interests of justice as well as the interests of the prisoners. It is too often nowadays thought, or seems to be thought, that the interests of justice means only the interest of the prisoners.

- g* In our view the public interest far outweighed the mitigating factors put forward for the appellants given the facts and the serious injuries inflicted that resulted in the death of Liew Chin Lin and the appropriate sentence would be nine years imprisonment on each of the appellants but the sentence to take effect from the date of arrest, that is, 16 February 1995 and we so ordered.

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